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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CONLEY, FREDRICK C

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 11/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/837,743

Applicant(s)

RAGEN, FRANK J.

Examiner

Fredrick C Conley

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12,22-25,27-31 and 41-53 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12,22-25,27-31 and 41-53 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Applicant's recitation "the pad is substantially the same length as the head and trunk of the baby along a portion under the baby" limits the device in comparison of the potential use, and fails to clearly define the meets and bounds of the invention.

In Re Brummel

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 11-12, and 41-44 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,062,168 to Kocib.

In reference to claim 1, Kocib discloses a baby support comprising:

a piece of fabric 10, the fabric sized to substantially encapsulate a baby, the fabric having attached thereto means 16 for receiving a support pad 18;

the support pad of uniformly planar construction sized to support the baby; and wherein when the support pad is inserted in the means for receiving the support pad, the support pad provides support for a baby. With regards to the Applicant's recitation to provide support for the baby's head and back it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Regarding claim 2, wherein the means 16 for receiving a support pad comprises a piece of material secured to the fabric about the periphery of the piece of material so

Art Unit: 3673

as to form a pouch, said pouch configured to receive the support pad therein so as to maintain the support pad in a desired position with respect to the fabric.

Regarding claim 11, wherein the pad is substantially the same length as the head and trunk of the baby along a portion under the baby.

In reference to claim 12, Kocib discloses a baby support comprising:

a piece of fabric 10, the fabric sized to substantially encapsulate a baby, the fabric having attached thereto means 16 for receiving a support pad 18;

the support pad of uniformly planar construction sized to support the baby; and wherein when the support pad is inserted in the means for receiving the support pad, the support pad provides support for a baby. With regards to the Applicant's recitation to provide support for the baby's head and back it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

In reference to claim 41, Kocib discloses a baby support system comprising:

a first support structure 10, the structure sized to encapsulate a baby, the structure having attached thereto means 16 for receiving a second support structure 18;

Art Unit: 3673

the second support structure of uniformly planar construction sized to support the baby; and wherein when the support pad is inserted in the means for receiving the support pad, the support pad provides support for a baby. With regards to the Applicant's recitation to provide support for the baby's head and back it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Regarding claim 42, wherein the first support structure 10 comprises a piece of fabric.

Regarding claim 43, wherein the first support structure comprises a blanket.

Regarding claim 44, wherein the second support structure comprises a resilient pad 18 that at least partially conforms to the baby's body.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,062,168 to Kocib.

Art Unit: 3673

Regarding claim 10, Kocib discloses the claimed invention except for the pad having a wider portion positioned under the baby's shoulder and a narrower portion across the foot area of the baby. It would have been an obvious matter of design choice to have the dimensions as stated above, since Applicant has not disclosed that the wider shoulder area and narrow foot area is critical and it would appear that the pad of Kocib would perform equally well.

In reference to claim 22, Kocib discloses a baby support comprising:

a blanket 10, the blanket sized to encapsulate a baby, the blanket having attached thereto means 16 for receiving a support pad 18 in a desired position with respect to the blanket;

the support pad of uniformly planar construction sized to support the baby; and

wherein when the support pad is inserted in the means for receiving the support pad, the support pad provides support for a baby. Kocib discloses the claimed invention except for the profile of the support pad broader than the baby and substantially the same length as the baby. It would have been an obvious matter of design choice to have the dimensions as stated above, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). With regards to the Applicant's recitation to provide support for the baby's head and back it has been held that the recitation that an element is "capable of" performing

Art Unit: 3673

a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Regarding claim 24, wherein the means 16 for receiving a support pad comprises a piece of material secured to the fabric about the periphery of the piece of material so as to form a pouch, said pouch configured to receive the support pad therein so as to maintain the support pad in a desired position with respect to the fabric.

Claims 3-4, 6, 9, 25, 28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,062,168 to Kocib in view of U.S. 5,193,238 to Clute.

Regarding claims 3-4 and 25 Kocib discloses all of the Applicant's claimed limitations except for having the cover detachably affixable to the fabric. Clute discloses a baby support having a cover having detachable connections with an opening 44 receiving pad 12. It would have been obvious to one having ordinary skill in the art at the time of the invention to have a cover with an opening receiving the pad in order to remove the pad from the covering to be washed and dried.

Regarding claim 6, 9, 28, and 31, Kocib discloses all of the Applicant's claimed limitations except for the cover detachably affixed to the fabric by means of a complementary strips of Velcro. Clute discloses complementary strips of Velcro (34-35) connected to the fabric and cover. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ Velcro in order to detachably affix the infant supports.

Art Unit: 3673

Claims 5, 8, 27, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,062,168 to Kocib in view of U.S. 5,193,238 to Clute, and further in view of U.S. 3,034,132 to Landsberger et al.

Regarding claims 5, 8, 27, and 30 Kocib discloses all of the Applicant's claimed limitations except for at least one snap connected to the cover; and at least one receiving snap connected to the fabric. Landsberger discloses at least one snap (16,17) connected to the cover; and at least one receiving snap (18,19) connected to the fabric. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ snaps in order to secure the blanket around the infant.

Claims 7, 29, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,062,168 to Kocib in view of U.S. 5,193,238 to Clute, and further in view of in view of U.S. 6,145,932 to Hamel-Nyhus et al.

Regarding claim 7, 29, and 45, Kocib discloses all of the Applicant's claimed limitations except for a zipper connected to the cover and fabric. Hamel-Nyhus discloses a zipper (24,26) connected to a fabric and cover. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the zipper in order to secure the blanket around the infant.

Art Unit: 3673

Claims 23 and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,062,168 to Kocib in view of U.S. 6,182,312 Walpin.

Regarding claim 23, Kocib discloses all of the Applicant's claimed limitations except for the pad comprising a memory foam. Walpin discloses a pad (24,26) comprising a memory foam. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the memory foam in order to provide improved support and allow the pad to conform to the shape of the user.

In reference to claim 46, Kocib discloses a baby support system comprising:
a blanket 10, the blanket sized to encapsulate a baby, the blanket having attached thereto means 16 for receiving a support pad 18 in a desired position with respect to the blanket;

the support pad of uniformly planar construction sized to support the baby; and wherein when the support pad is inserted in the means for receiving the support pad, the support pad provides support for a baby. Kocib discloses the claimed invention except for the profile of the support pad broader than the baby and substantially the same length as the baby. It would have been an obvious matter of design choice to have the dimensions as stated above, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA

Art Unit: 3673

1955). With regards to the Applicant's recitation to provide support for the baby's head and back it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Regarding claim 47, wherein the means 16 for receiving a support pad comprises a piece of material secured to the fabric about the periphery of the piece of material so as to form a pouch, said pouch configured to receive the support pad therein so as to maintain the support pad in a desired position with respect to the fabric.

Regarding claim 48, wherein the means 16 for receiving a support pad comprises a cover for receiving the support pad, the cover detachably (20,22) affixable to the fabric (fig. 3), the cover defining an access for inserting and removing the support pad 18.

Claims 49-50 and 52-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,062,168 to Kocib in view of U.S. 6,182,312 Walpin, and in further view of U.S. 3,034,132 to Landsberger et al.

Regarding claims 49 and 52 Kocib discloses all of the Applicant's claimed limitations except for at least one snap connected to the cover; and at least one receiving snap connected to the fabric. Landsberger discloses at least one snap (16,17) connected to the cover; and at least one receiving snap (18,19) connected to the fabric. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ snaps in order to secure the blanket around the infant.

Art Unit: 3673

Regarding claim 50 and 53, Kocib discloses all of the Applicant's claimed limitations except for the cover is detachably affixed to the fabric by means of a complementary strips of Velcro. Landsberger discloses complementary strips of Velcro connected to the fabric and cover. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ Velcro in order to secure the blanket around the infant.

Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,062,168 to Kocib in view of U.S. 6,182,312 Walpin, and in further view of U.S. 6,145,932 to Hamel-Nyhus et al.


Regarding claim 51, Kocib discloses all of the Applicant's claimed limitations except for a zipper connected to the cover and fabric. Hamel-Nyhus discloses a zipper (24,26) connected to a fabric and cover. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the zipper in order to secure the blanket around the infant.

Art Unit: 3673

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fredrick C Conley whose telephone number is 308-7468. The examiner can normally be reached on m-th m-fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are 305-7687 for regular communications and 3057687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-2168.


November 14, 2002


LYNNE H. BROWNE
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